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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,832	02/28/2004	Kyung-Ju Choi	ZM921/05023	7344
27868	7590	01/22/2010	EXAMINER	
JOHN F. SALAZAR			MATZEK, MATTHEW D	
MIDDLETON & REUTLINGER				
2500 BROWN & WILLIAMSON TOWER			ART UNIT	PAPER NUMBER
LOUISVILLE, KY 40202			1794	
			MAIL DATE	DELIVERY MODE
			01/22/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/788,832	Applicant(s) CHOI, KYUNG-JU
	Examiner MATTHEW D. MATZEK	Art Unit 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 September 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 22-29 and 33-44 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 22-29 and 33-44 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 24 January 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date: _____
 5) Notice of Informal Patent Application
 6) Other: _____

Response to Amendment

1. The amendment dated 9/28/2009 has been fully considered and entered into the Record. Claims 22, 29 and 33 have been amended and contain no new matter. Claims 22-29 and 33-44 remain pending.

Response to Arguments

2. Applicant's arguments, see Remarks, filed 9/28/2009, with respect to the rejection(s) of claim(s) 22-29 and 33-44 under Healey in view of Pall have been fully considered and are persuasive in light of the amendment of all independent claims. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Shipp, Jr. et al., hereinafter "Shipp". Examiner realizes that this reference has been previously applied and withdrawn, however, following reconsideration of the reference in light of the amendment Examiner feels that Shipp reads on the amended claims.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 22-27, 33, 34, 36, 38 and 40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shipp, Jr. et al. (US 4,714,647).

a. Shipp discloses a method of making a filter medium formed by sequentially depositing layers of melt-blown thermoplastic fibers having the same composition, but differing diameters, onto a collector. The resultant laminate web has a fiber size gradient through its depth so that large particulate can be trapped through the filter's depth without becoming prematurely plugging the fine fiber, high efficiency layers (abstract). To overcome premature plugging the layers of the filter medium different densities between layers may be used or different sized fibers (col. 2, lines 56-64).

b. The foregoing objective is achieved by a one-step, melt-blown process carried out on a forming line which has multiple die heads spaced along a collecting belt. By varying the process parameters for each die head, to produce microfibers of varying average diameter, a web may be built up of subsequent layers, each having a predetermined and generally different average fiber size. As a result, the first (upstream) layer of the web may have large fiber sizes (extra coarse) and resulting large pore sizes for entrapping

large particulate, intermediate layers may have smaller fiber sizes (coarse and medium) for trapping intermediate size particulate, and a final (downstream) layer or layers may have small fiber sizes (fine) and pore sizes for entrapment of the smallest particulate that passes easily through the layers of larger pore size. As a result, the large and intermediate particulate is trapped in the first and intermediate layers through the depth of the filter, thereby avoiding premature plugging of the upstream surface of the filter medium and the fine final layer (col. 3, lines 50-69).

c. The filter forming process described in Shipp produces at least first and second layered mat portions. Within each layer and between the layers there is fiber diameter, permeability, and density progression. As shown in the Figures there is mixing of fiber diameters within a given layer. Overall, the fiber diameters range from about 0.5 to 10 microns (col. 2, lines 10-33). Since there is mixing of fiber diameters during the filter forming process there may also be mixing of fibers between layers depending upon where the delineation between layers is marked. Claim 24 is rejected as the layers are combined in a successive manner on the foraminous belt. The fiber size of within the filter media is progressive and all fiber diameters of Shipp fall within the claimed diameters ranges of Applicant. Claim 27 is rejected as regardless of where the layers are delineated within the article the fiber diameters would fit within the claimed ranges.

Claim 40 is rejected the Figures illustrate that some of the fibers are curled and entangled.

d. Shipp points out that the forming line process used to make his gradient filter may be replaced with collecting drums to form the same melt-blown gradient filter (col. 1, lines 15-23) because as each layer is formed on the collecting drum and sequentially

layered the filter formed is structurally the same as one having multiple layers formed on a foraminous belt . “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.”

In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292.

Claim Rejections - 35 USC § 103

4. Claims 39 and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shipp, Jr. et al. (US 4,714,647).
 - a. Claims 39 and 41 are rejected as Shipp teaches the formation of a three-layer filter media and it would have been obvious to one of ordinary skill in the art to have manipulated the fiber size distribution and porosity depending on the desired functionality of each of the fiber layers and decrease the overall pressure drop of the

media by providing additional surface area to entrap particles of a given size preventing premature plugging.

b. Claims 42-44 are rejected as one of ordinary skill in the art would have recognized fiber size distribution may be manipulated to maximize the performance of the filter media. The filter of Shipp is formed from extruded thermoplastic fibers and would be "smooth" on their surface.

5. Claims 28, 29, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shipp, Jr. et al. (US 4,714,647) as applied to claims 23 and 33 above, and further in view of Airflo (EP 0 960 645 A2). Shipp fails to provide for specific permeabilities or porosities.

a. The EP '645 reference relates to a disposable vacuum cleaner bag composition. The reference discloses a three-layer vacuum cleaner bag construction (refer to Figure 4) that comprises a filtration grade meltblown layer with fibers with diameters in the range of 1-15 micrometers and air permeability of 100-1500 L/(m² x s) [12.3-185 cfm/ft²] and a high bulk meltblown layer with fibers with diameters in the range of 5-20 micrometers and an air permeability of 300-8000 L/(m² x s) [36.9-492 cfm/ft²] (Table 1). The range of diameters for the fibers within each layer anticipates the claim limitations of varied fiber sizes and the media's resultant permeability and porosity within each layered mat portion. With regards to the mode the meltblown material is produced, refer to [0054] in which the reference teaches attenuating the filaments upon formation. As shown in the Figures the layers of the filter media may be combined in a successive manner and would intersperse when adjacent layers are bonded together.

b. Shipp are from the same field of endeavor (i.e. filters).

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have looked to Airflo for guidance as to permeabilities that would allow for successful filtration.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW D. MATZEK whose telephone number is (571)272-2423. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571.272.1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew D Matzek/
Examiner, Art Unit 1794

/D. Lawrence Tarazano/
Supervisory Patent Examiner, Art Unit
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